

**PROPERTY TAX RULE 462.040**  
**CHANGE IN OWNERSHIP—JOINT TENANCIES**  
**ALTERNATIVE LANGUAGE/SUGGESTIONS**

No.	REFERENCE	SOURCE	PROPOSED LANGUAGE
1	(b)(1)	CAA – San Luis Obispo County (B. Edginton)	<b>Revise paragraph:</b> (1) The transfer creates or transfers any joint tenancy interest, <del>including an interest in a trust,</del> and after such creation or transfer, the transferor(s) is one of the joint tenants. Such a transferor(s) is also a transferee(s) and is, therefore, considered to be an "original transferor(s)" for purposes of determining the property to be reappraised upon subsequent transfers. If a spouse of an original transferor acquires an interest in the joint tenancy property either during the period that the original transferor holds an interest or by means of a transfer from the original transferor, such spouse shall also be considered to be an original transferor. <del>Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.</del> All other initial and subsequent joint tenants are considered to be "other than original transferors."
2	Example 4-1	CAA – San Luis Obispo County (B. Edginton)	<b>Delete example:</b> <del>Example 4-1: A and B purchase property as joint tenants. On December 12, 2004, A and B transfer their property interests to each other as joint tenants through their respective trusts. A and B are transferors who are among the joint tenants and are, therefore, considered to be "original transferors." If A and B had transferred their interests into trust before November 13, 2003 or on or after [the effective date of the proposed regulatory change], neither A nor B would be considered "original transfers" as a result of the transfer into trust.</del>
3	Example 4-1	CAA – San Luis Obispo County (B. Edginton)	<b>Add example:</b> <u>Example 4-1: A and B purchase property as joint tenants. A transfers his interest to his trust. No change in ownership, since A's trust is revocable, and for his benefit. However, A's trust and B are now tenants in common unless there is a court order specifying that A's trust is a joint tenant with B.</u>
4	—	CAA – San Luis Obispo County (B. Edginton)	<b>Add example:</b> <u>Example 4-2: A and B as tenants in common transfer to A as trustee of A's revocable trust and B as joint tenants. No change in ownership, since each continues to own a 50% interest. However, A' trust and B continue as tenants in common unless there is a court order specifying that A's trust is a joint tenant with B. In this case, both A's trust and B become original transferors.</u>
5	—	CAA – San Luis Obispo County (B. Edginton)	<b>Add example:</b> <u>Example 4-3: A and B purchase property as tenants in common, with A owning 25% and B owning 75%. A and B transfer to A as trustee of A's trust and B as joint tenants. There is a 25% change in ownership, and A's trust and B remain tenants in common unless there is a court order specifying that A's trust is a joint tenant with B. If there is a court order specifying that A's trust is a joint tenant with B, both A's trust and B become original transferors, and there is no change in ownership.</u>
6	Example 7-1	CAA – San Luis Obispo County (B. Edginton)	<b>Revise sentence:</b> Example 7-1: A, B, and C are joint tenants and A is <del>an</del> <u>the</u> "original transferor." A dies. B and C transfer to B, C, and D as joint tenants. D is A's husband. D does not become an original transferor because he did not acquire his interest during the period that A held an interest in the joint tenancy.

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7	Example 7-2	Nevada County Assessor's Office (S. Wagner)	<b>Clarify example:</b> This example has always been confusing because it never stated that A was an "original transferor" prior to the transfer to B and C. My request is that Example 7-2 be amended to clarify that A was an "original transferor" prior to the transfer to B and C.
8	Example 9	CAA – San Luis Obispo County (B. Edginton)	<b>Revise example:</b> Example 9: <del>A and B purchase property as joint tenants and transfer their joint tenancy interests to each other through their respective trusts on December 12, 2004. A and B become "original transferors."</del> A and B sell a 50% interest to C and D, with the deed showing A, B, C and D as joint tenants. <del>C and D then transfer their joint tenancy interests to each other through their trusts, so that both become "original transferors."</del> <u>A and B then sell their remaining 50% to C and D, and go off title. A, B, C, and D transfer to A, B, C, D, and E as joint tenants. A, B, and E then transfer to C and D.</u> Under circumstances where application of the step-transaction doctrine to disregard the form of the transaction would be appropriate due to their intent to avoid a change in ownership, A, B, C, and D do not become "original transferors" as the result of their transfers <del>to each other</del> .
9	(d)	CAA – San Luis Obispo County (B. Edginton)	<b>Revise paragraph:</b> (d) For purposes of this section, the assessor may consider persons holding joint title to property, such as tenants in common, to be joint tenants <del>and "original transferors"</del> if there is "reasonable cause" to believe that the parties intended to create a joint tenancy and each person was a transferor among the persons holding title. <u>"Reasonable cause" means a deed, Affidavit of Death of Joint Tenant, will, or estate plan, unless circumstances causing the application of the step transaction exist.</u>
10	—	Gregg St. Cyr, Conway & St. Cyr Attorneys	<p><b>Comments:</b> We are able to provide our clients who do not become CRDPs [California Registered Domestic Partners] many of the protections offered to CRDPs through alternative estate planning and contractual agreements. The use of reciprocal trusts allows us to provide our clients protection from property tax reassessment and place them on equal footing with married couples without suffering the potential federal tax consequences associated with CRDPs.</p> <p>I understand that may assessors are concerned with the bureaucratic levels of work required of them in checking to ensure that the trusts validly create original transferor status and that this was a major impetus in bringing about the amendment. However, the proposed amendment will still require this level of bureaucracy to determine whether the trust's creator transferred property to the trust between November 13, 2003, and the date the board enacts this proposed amendment. The assessors must then determine whether those trusts that fall within this date range meet the requirements for original transferor status. In the end, the assessors will still be required to know how to determine original transferor status for reciprocal trusts.</p> <p>Registering as CRDPs is not practical for many same-sex couples, and the bureaucracy levels reciprocal trusts place on assessors are not materially different with this new amendment. Therefore, to maintain an equal footing between married couples and unregistered same sex partners, we feel it is important that Rule 462.040 remain as it is today at least unless and until government officials and courts resolve the questions and consequences surrounding CRDPs.</p>

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11	—	CAA Rule Change Committee	<p><b>Comments:</b> The changes made to Property Tax Rule 462.040 in 2003 had a variety of consequences which were unforeseen and unintended by the parties who advanced them. The most immediate, albeit not the only problem, is that of trusts in joint tenancies. We understand that the intent was to broaden the definition of a 'family' joint tenancy, however because of the real and potential problems with trusts as joint tenants, we ask that Rule 462.040 be amended to expressly disallow trusts as joint tenants for property tax purposes.</p> <p>Other than the fact that a transfer to oneself from oneself cannot really be considered a transfer at all and should not create 'original transferor' status, the wording regarding trusts in (b)(1) is, if not a fallacy, then at the very least, only sometimes true; i.e., the sentence 'Any joint tenant may also become an original transferor by transferring his or her joint tenancy interest to the other joint tenant(s) through his or her trust if the trust instrument names the other joint tenant(s) as the present beneficiary or beneficiaries.' Aside from the problem of using the term 'present beneficiary' to mean beneficiary of a future interest, the sentence is too general. While it may be true that a transfer from oneself to ones <i>revocable</i> trust for the benefit of someone else is not a change in ownership, if the trust is <i>irrevocable</i>, ownership vests in another and therefore changes.</p> <p>If it were a matter of merely changing the wording in (b)(1), that could be easily accomplished. There are other problems as well, however. In a memorandum dated May 19, 2005, Tax Counsel for the Board of Equalization addressed a concern from the Second District Board Member's Office regarding whether a transfer of a joint tenancy interest to the joint tenant's revocable living trust severs the joint tenancy. The first question posed was "Can a trust ever be a joint tenant?" The answer by Counsel was: "Yes, California Civil Code §683, subdivision (a) specifies that a joint tenancy may be created by grant or devise to trustees as joint tenants." Civil Code 683(a) actually reads: "A joint interest is one owned by two or more persons in equal shares, by a title created by a single will or transfer...or when expressly granted or devised to executors or trustees as joint tenants." While it may be true that the Civil Code allows for trustees to hold an interest in joint tenancy, a trustee may or may not be a trustor, and neither can be a trust. Counsel goes on to explain that "For property tax purposes, however, conveyance of legal title[to a trustee] does not constitute a transfer of an interest that confers ownership on the transferee resulting in a change in ownership. Thus, the transfer of legal title does not destroy any of the four unities because the joint tenant retains the present beneficial interest in the property." Precisely. We agree that the transfer of an interest into ones revocable trust is not a change in ownership regardless of whom the trustee is. (This is also why original transferor status should not be created; no interest transfers.) The terms 'trust', 'trustor' and 'trustee' are not synonymous, however, and should not be used so loosely. Civil Code §683(a) is not authority for a <i>trust</i> as joint tenant; it only allows for <i>trustees</i> as joint tenants.</p> <p>Holding title in joint tenancy through the medium of a trust can lead to very serious unintended consequences, not just for administrators of property tax law, but for the parties holding those interests as well. Because of this, we ask that Rule 462.040 be amended to either expressly disallow trusts as joint tenants for property tax purposes ... or excise the trust language altogether ....</p>